

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MONTGOMERY CARL AKERS,

Plaintiff,

v.

JAMES KESZEI, et al.,

Defendants.

2:07-CV-572 JCM (GWF)

Date: N/A

Time: N/A

ORDER

Presently before the court is plaintiff Montgomery Carl Akers' objection (#17) to Magistrate Judge Foley's report and recommendations (#16).

On June 19, 2007, Judge Foley issued an order (#3) granting plaintiff's application to proceed *in forma pauperis*. Judge Foley ordered plaintiff to pay an initial installment fee of twenty-one dollars and forty-eight cents (\$21.48) toward the full filing fee of three hundred fifty dollars (\$350.00) within thirty (30) days of the date of the order (#3). Judge Foley advised the plaintiff that failure to make the payment could result in dismissal of the action.

On September 17, 2007, Judge Foley issued findings and recommendations (#16) stating that plaintiff had not yet complied with the order (#3) requiring him to make partial payment of the filing fee. Judge Foley recommended that this court dismiss the complaint without prejudice based on plaintiff's failure to pay the filing fee.

On September 29, 2007, plaintiff filed objections to the findings and recommendations of the Magistrate Judge (#17). First, Akers alleges that the Federal Bureau of Prisons has interfered with

1 the his ability to access this court by denying him postage.

2 Second, Akers contends that Judge Foley did not give him legitimate consideration of the
3 issues and evidence that he has presented to the court. Specifically, he claims that Judge Foley's
4 recommendation to dismiss the case based upon his failure to pay the filing fee is a "fundamental
5 defect" creating "a complete miscarriage of justice" that is unconstitutional because the court cannot
6 make an order the litigant cannot comply with. He also claims that the court should not adopt Judge
7 Foley's findings because he has standing in the case.

8 In support of his objections, plaintiff has attached a "rejection notice" from the administrative
9 remedy coordinator at his facility in Florence, Colorado. The rejection notice states that plaintiff's
10 request for postage was denied because he did not submit the proper number of continuation pages
11 with his request. It further states that plaintiff may resubmit his request in proper form within five
12 (5) days of the date of the rejection notice.


13 The plaintiff has not stated that he made an attempt to cure the defect in his original request
14 for postage by resubmitting a request in proper form within five (5) days. Further, he has not alleged
15 that he has paid or attempted to pay through his endeavored mailings the requisite installment
16 towards the filing fee in this case.

17 Having reviewed all of the filings made in this case, Judge Foley's report and
18 recommendations (#16), and the plaintiff's objections (#17),

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge Foley's
20 report and recommendations (#16) be, and the same hereby is, ACCEPTED and AFFIRMED in its
21 entirety.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the plaintiff's claims
23 against all defendants be, and the same hereby are, DISMISSED without prejudice.

24 DATED this 23rd day of October, 2007.

25
26 
27 UNITED STATES DISTRICT JUDGE
28